

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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**JOEL MURRAY,**

**Plaintiff,**

**-v-**

**9:08-CV-912 (NAM/ATB)**

**WILLIAM F. HULIHAN, Superintendent,  
Mid-State Correctional Facility; M. DEBRACCIO,  
Correction Counselor, Mid-State Correctional  
Facility; R. FERRARO, Correction Counselor,  
Mid-State Correctional Facility; W. KOAGLE,  
Correction Counselor, Mid-State Correctional  
Facility; S. MOORE, Correctional Counselor,  
Mid-State Correctional Facility; B. SIMONS,  
Senior Correction Counselor, Mid-State  
Correctional Facility; C. CHEYNE, Social Worker,  
Mid-State Correctional Facility; M. STRUMLOFLER,  
Mid-State Correctional Facility,**

**Defendants.**

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**APPEARANCES:**

Joel Murray  
00-A-1884  
Elmira Correctional Facility  
P.O. Box 500  
Elmira, New York 14902  
Plaintiff *Pro Se*

Hon. Andrew M. Cuomo, Attorney General of the State of New York  
Brian J. O'Donnell, Esq., Assistant Attorney General  
The Capitol  
Albany , New York 12224  
Attorney for Defendants

**Hon. Norman A. Mordue, Chief U.S. District Judge:**

**MEMORANDUM-DECISION AND ORDER**

Plaintiff, an inmate in the custody of the New York State Department of Correctional  
Services ("DOCS"), brought this action to recover compensatory and punitive damages under 42

U.S.C. § 1983. Plaintiff moved for a preliminary injunction (Dkt. No. 22). Defendants cross-moved for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) (Dkt. No. 24). Upon referral pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3(c), United States Magistrate Judge Andrew T. Baxter motion issued a Report and Recommendation (Dkt. No. 38) recommending denial of an injunction and dismissal of the action.

Plaintiff filed an objection to the Report and Recommendation (Dkt. No. 40). In view of the nature of plaintiff's objections, the Court reviews the Report and Recommendation *de novo*. See 28 U.S.C. § 636(b)(1)(C).

As Magistrate Judge Baxter notes, on this Rule 12(c) motion to dismiss on the pleadings, the Court applies the standard applicable to a Rule 12(b)(6) motion for failure to state a claim. See *Patel v. Contemporary Classics of Beverly Hills*, 259 F.3d 123, 126 (2d Cir. 2001). In reviewing the complaint and its attachments, as well as plaintiff's other submissions, the Court accepts as true all factual allegations and draws all reasonable inferences in plaintiff's favor. See *ATSI Commc'n, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 98 (2d Cir. 2007). Further, because plaintiff is proceeding *pro se*, the Court construes his submissions liberally and interprets them to raise the strongest arguments that they suggest. See *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006); *Jacobs v. Mostow*, 271 Fed.Appx. 85, 87 (2d Cir. 2008) (citing *Fernandez v. Chertoff*, 471 F.3d 45, 51 (2d Cir. 2006)). Applying these standards, the Court agrees with Magistrate Judge Baxter that the complaint and other submissions fail to plead facts sufficient to "state a claim for relief that is plausible on its face." *Ruotolo v. City of New York*, 514 F.3d 184, 188 (2d Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

There is no merit to plaintiff's objection that Magistrate Judge Baxter made credibility determinations. Plaintiff's extensive allegations, no matter how liberally and favorably construed, state no plausible claim of retaliation or conspiracy. Nor does plaintiff allege deprivation of a liberty interest such as would trigger a right to procedural due process. Upon *de novo* review, the Court finds that plaintiff does not state a claim upon which relief may be granted. For the same reason, plaintiff does not meet the requirements for a preliminary injunction.

It is therefore

ORDERED that the Report and Recommendation (Dkt. No. 38) is accepted; and it is further

ORDERED that defendants' motion (Dkt. No. 24) is granted and the action dismissed; and it is further

ORDERED that plaintiff's motion for a preliminary injunction (Dkt. No. 22) is denied.

IT IS SO ORDERED.

March 31, 2010  
Syracuse, New York

  
Norman A. Mordue  
Chief United States District Court Judge